

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
REPLY BRIEF**



77-1035

To be argued by  
WILLIAM L. RICHMAN

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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RJS

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

JUAN ANTONIO ALVAREZ et al.,  
CHARLES COWPERS, a/k/a "Shi,"

Defendants-Appellants.  
-----x

REPLY BRIEF      FOR DEFENDANT-  
APPELLANT CHARLES COWPERS



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"Appellant Cowpers states, without further elaboration, that there is insufficient evidence to support the verdict." (G. Br. 59)

The testimony adduced by the Government through its witnesses, Brown, Parker and Tompkins, limited as it is,<sup>\*</sup> and fully elaborated in this appellant's brief, is consistent only with Brown's characterization of Cowpers as a street addict for purchases of eighth kilogram packages<sup>\*\*</sup> were just enough to

<sup>\*</sup>Fourteen pages out of 9,500 plus pages.

<sup>\*\*</sup>The kilogram "given" to Cowpers by Brown will be discussed. (infra



satisfy his needs and the craving of his wife Marion Dunmore.

The lack of substance in the prosecutor's case finds adequate support in its effort to bolster a very weak foundation with the claim of partnership with Laws (a co-appellant and co-defendant] (G. Br. 36, 53, 63, 81-82) and the alleged activity of Marion Dunmore (G. Br. 37)\* during the period of Cowpers' incarceration.

There is absolutely no evidence in this record to give credence to the charge that Laws and Cowpers were associated or partners in the narcotic trade nor one shred of testimony that Cowpers was involved with Laws in the conspiracy set forth in the indictment. It is significant to note that no transcript references appear in the Government's brief after the gratuitous conclusive statements (G. Br. 36, 38), and certainly no basis for the statement that "(s)ince Tompkins paid for her drugs in clothing which Cowpers and Laws shared, the jury could properly have concluded that Laws and Cowpers were associates in the narcotics business selling heroin purchased by Cowpers from Brown to Tompkins." (G. Br. 81-82)

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\*Marion Dunmore was acquitted so that the inclusion of her alleged participation is improper.

Despite the acquittal of Cowpers wife Marion Dunmore, the Government now attempts to tar Cowpers with an accusation that was rejected by the jury in the instant case.

The only testimony adduced through Parker with respect to Cowpers was completely of the negative type. His testimony consisted solely of hearsay to the effect that Brown met with Cowpers on occasion, in one instance statements by Brown to Parker that he was preparing drugs for Cowpers, but absolutely no testimony that Parker viewed the transfer of drugs or money between Brown and Cowpers. The fact that Parker was unable to identify the likeness of Cowpers completely destroys the Government's attempt to build a case against this appellant. The testimony of Tompkins is likewise suspect. Despite the fact that she was working with a special Federal agent as an informer, she at no time reported her alleged transactions with Cowpers either to Special Agent Gerry or to any other official with whom she was cooperating.

#### The Kilo Sale

The Government concedes "that there was no



testimony in the Grand Jury concerning Cowpers' purchase of one kilogram of cocaine from Brown in November 1974. (G. Br. 48) Yet, there is no elaboration as to how this alleged sale or gift occurred. There is testimony that the alleged occurrence took place while Brown was underground in Miami in November of 1974 and that he flushed three kilograms down a toilet. There is further testimony that his friends and son-in-law Parker gave him small quantities of drugs for his own use. It is, therefore, inconceivable that Brown would be in a position to give Cowpers one kilogram of heroin when he was scrounging for drugs to satisfy his own habit. There is absolutely no testimony that Cowpers was in Miami in November 1974 or at any other time to meet with Brown.

The Jury Request for Testimony  
regarding February '73 transaction

The Government brief makes no real response to Cowpers' claim of prejudicial error by the reading of the direct testimony which consisted solely of the prima facie case involving the February transaction. The testimony regarding this incident consisted of both the direct and cross examination of Brown and should rightfully have

been submitted to the jury in the absence of a request for more specific evidence.

In United States v. Gentile, 525 F.2d 252, 260-261 [2nd Cir. 1975], this Court held:

The legal principle, however, is not so unyielding. It is well stated in the ABA Standards Relating to the Administration of Criminal Justice, Trial by Jury § 5.2(b) (1968):

The court need not submit evidence to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review the evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

In United States v. Tager, 481 F.2d 97, 101 (10 Cir. 1973), cert. denied, 415 U.S. 914, 94 S. Ct. 1410, 39 L. Ed. 2d 469, 1974, and State v. Miller, 2 Or. App. 353, 467 P.2d 683, 684-85 (1970), trial courts which insisted that a jury hear all of a witness' testimony, rather than the partial segment the jury had requested, were affirmed on appeal.

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In our own United States v. McCarthy, 473 F.2d 300 (2 Cir. 1972), we refused to reverse where, as part of a general claim that the trial judge had unduly interfered with the proceedings, the defendants pressed the point that he had allowed the entire testimony of a witness to be read back even after the forelady had said that the jury had



heard enough. We found that the judge had not 'in any way prejudiced any of the appellants or displayed the slightest bias toward them' but rather had exercised his discretion 'as to how much of a witness' testimony should be read back to the jury in the interest of fairness and completeness.' 473 F.2d at 308. In other words, reversal for submitting material in addition to that requested is required only where the submission might indicate, or be fairly taken by the jury to indicate, prejudice of the judge against the defendant...

The jury was entitled to the entire picture, which it certainly could not have obtained by the limited reading of the Government's prima facie case.

#### Conclusion

For the foregoing reasons, it is respectfully submitted that the judgment of conviction be set aside and the indictment against Cowpers be dismissed.

Respectfully submitted,

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Attorney for Defendant-  
Appellant Charles Cowpers

6/3/77

Armande Lesser an attorney  
associated with William L.  
Richman, attorney for appellant  
that on June 3, 1977 he mailed  
a copy of the within appellant's  
Reply Brief to Daniel J. Baller,  
Assistant United States attorney  
in a post paid wrapper  
1 St Andrews Plaza, New  
York, NY 10007.

Dated New York  
June 3, 1977

Armande Lesser



